

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 359 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

1 to 5: No

COMMISSIONER OF INCOME-TAX

Versus

SUHRID GEIGY LTD

Appearance:

MR BB NAIK for MR MANISH R BHATT for Petitioner

MR DA MEHTA, MR RK PATEL and MR BD KARIA for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA. and

MR.JUSTICE A.R.DAVE

Date of decision: 04/05/99

ORAL JUDGEMENT (per R. Balia, J.)

As required by Commissioner of Income-tax,
Gujarat III, Ahmedabad, the Income Tax Appellate Tribunal
Ahmedabad Bench 'B' has referred four questions of law
arising out of its order in I.T.A. No.1794/Ahd/81
relating to Assessment Year 1976-77 for the opinion of

this Court.

Question No.1 reads as under:

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal has not erred in law in allowing development rebate on the amount of Rs. 5,48,443 being the difference in exchange on account of remittance outside India disregarding the specific provisions of section 43A(2) of the Income-tax Act, 1961?"

2. It has been pointed out by learned counsel for he parties that the Supreme Court in CIT v. Arvind Mills Ltd., 193 ITR 255, has held that for the purpose of computation of actual cost of machinery which is imported for the purpose of computing development rebate any additional amount that becomes payable as a result of devaluation of Indian Rupee to the foreign seller is not taken into account in view of sec. 43A(1),(2) of the Income-tax Act, 1961. Thus, law is settled that additional liability incurred in payment of price which is payable in foreign currency due to difference in rate of exchange cannot be considered for computation of actual cost in view of the provisions of sec. 43A(1),(2). Thus, question No.1 is to be answered in negative, that is to say, in favour of revenue and against the assessee.

3. Question No.2 reads as under:

"Whether, on the facts and in the circumstances of the case, the deletion of addition of Rs. 7,592 on account of rest house expenses is justified?"

4. Learned Counsel for the assessee concedes that this question may be answered in favour of revenue and against the assessee, looking to the smallness of matter, without examining the issue on merit. On concession by the learned counsel for the assessee, question No.2 is answered in negative, that is to say, in favour of the revenue and against the assessee.

5. Question No. 3 reads as under:

"Whether the Appellate Tribunal has been right in law in directing the Income-tax Officer to allow relief under section 80J of the Income-tax Act, 1961 in respect of building, plant and machinery under erection?"

6. It has been pointed out by learned counsel for the parties that in view of the decision of this Court in 115 ITR 879 which has since been affirmed by the Supreme Court in 224 ITR 383, the question is required to be answered in affirmative, that is to say, in favour of assessee and against the revenue. We accordingly do so.

7. The last question which has been referred to this Court reads as under:

"Whether the Appellate Tribunal has been right in law in holding that the Income-tax Officer was not justified in levying interest under section 216 of the Income-tax Act, 1961 in view of the fact that there was nothing to indicate that the advance tax happened to be underestimated by reason other than under estimation of income?"

8. This relates to levy of interest on delayed payment of whole or part of advance tax installments as are payable under the provisions relating to payment of advance tax resulting in delayed payments. It has been pointed out that this Court in CIT v. Nagri Mills Ltd., 166 ITR 292 has held that unless there is a finding of the Income-tax Officer that there has been deliberate inaccurate statements furnished by the assessee which resulted in delayed payment of first two installments of the advance tax, interest u/s 216 is not leviable. It is to be seen that interest u/s 216 is leviable only in respect of delayed payment of first two installments and not on deficiency of payment of advance tax for the whole year. The same view was taken by the Andhra Pradesh High Court in Addl. CIT v. Vazir Sultan Tobacco Co. Ltd., 122 ITR 251, which has been followed by a Division Bench of this Court in decision referred to above. We are in respectful agreement.

9. Following the aforesaid decisions, we answer question No.4 in affirmative, that is to say, in favour of assessee and against the revenue.

The reference accordingly stands disposed of.
There shall be no order as to costs.

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